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19 UNITED STATES OF AMERICA

20 UNITED STATES DISTRICT COURT

21 FOR THE CENTRAL DISTRICT OF CALIFORNIA

22 WESTERN DIVISION

23 UNITED STATES OF AMERICA,

24 No. CV 2:22-cv-7443-AB

25 Plaintiff,

26 **GOVERNMENT'S OPPOSITION TO**
CLAIMANTS' MOTION TO DISMISS

27 v.

28 \$200,000 IN U.S. CURRENCY,
Defendant.

Hearing Date: Feb. 3, 2023
Location: Courtroom of the
Hon. André Birotte

29 Plaintiff United States of America, by and through its counsel
30 of record, the United States Attorney for the Central District of
31 California and Assistant United States Attorney Dan G. Boyle, hereby
32 files its Opposition to Claimants' December 9, 2022 Motion to Dismiss
33 in this Action. ECF No. 15.

This Opposition is based upon the attached Memorandum of Points and Authorities, the files and records in this case, and such further evidence and argument as the Court may permit.

Dated: January 11, 2023

Respectfully submitted,

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I. INTRODUCTION

It is black letter law that on a motion to dismiss, all inferences are drawn in the non-movant's favor. Yet in their present motion to dismiss (the "Motion" or "Mot."), claimants Jasmol Singh ("Singh") and Umit Bagga ("Bagga," and collectively with Singh, "Claimants") ask the Court to do the very opposite: adopt their proffered innocent explanations of the facts alleged in the Verified Complaint here (the "Complaint" or "Compl.") in order to dismiss this action in its entirety, despite the government's allegations to the contrary. The Court should decline to do so.

In brief, the Complaint alleges that Singh was intercepted on recorded calls with at least one identified drug trafficker discussing exchanges of currency using coded language specific to the drug trafficking organization being investigated, and was then observed attempting to pick up \$200,000 in unmarked and unserialized bills from a courier outside of a shopping center, and after this currency was seized, a narcotics detection canine alerted to the currency. While Claimants offer numerous potentially-innocent explanations for these facts, these arguments are inappropriate at the pleadings stage. The Motion should be denied.

II. STATEMENT OF FACTS¹

In September of 2021 members of Drug Enforcement Administration's ("DEA") Riverside Task Force Group-2 ("TFG-2") were conducting an ongoing investigation into a drug trafficking organization (the "DTO") operating in Southern California. See

¹ The following facts are drawn from the Complaint (ECF No. 1), and are taken as true for present purposes.

1 Complaint, ¶ 8. During this investigation, agents and TFOs with TFG-2
2 identified a multi-kilogram cocaine trafficker who transported and
3 distributed illicit narcotics and narcotics proceeds in the region on
4 behalf of the DTO, referred to in the Complaint as "Trafficker 1."
5 Complaint, ¶ 9. Investigating agents obtained judicial authorization
6 to intercept certain communications, and based on this wiretap
7 investigation, seized multiple kilograms of cocaine, methamphetamine,
8 heroin, and a large amount of U.S. Currency. Complaint, ¶ 9-10.

9 In September of 2021, Trafficker 1 was intercepted on a phone
10 call speaking with Singh. Complaint, ¶ 10. During the intercepted
11 call, Trafficker 1 and Singh used coded language to discuss the
12 transfer of \$80,000.00 in cash to be delivered to another member of
13 the DTO. Id., ¶ 11. Investigating agents were familiar with the coded
14 language used by the DTO based on their ongoing investigation, and
15 specifically, the DTO's use of the word "documents" as a coded
16 reference to thousands of dollars in U.S. Currency. Complaint, ¶ 12.
17 During this intercepted call, agents noted that Singh used this same
18 coded language to refer to U.S. Currency. Id.

19 Roughly one month later, Singh was again intercepted during TFG-
20 2's investigation. Complaint, ¶ 13. In this call, Singh was contacted
21 by an unknown male (the "UM") and directed to meet and receive "200."
22 Id. During this call, Singh and the UM used the same coded language
23 to discuss U.S. Currency as used by Trafficker 1 during Singh's
24 intercepted call approximately one month earlier. Id. Singh and the
25 UM also discussed a shopping center as the location for this pickup
26 (the "Shopping Center"). Complaint, ¶ 14.

27 Based on this intercept, TFG-2 agents requested Fontana Police
28

1 Department ("FPD") officers establish surveillance the Shopping
2 Center. Complaint, ¶ 14. FPD officers set up surveillance at the
3 Shopping Center on October 8, 2021, and during surveillance, observed
4 an adult male, subsequently identified as Eduardo Castro Gallardo
5 ("Gallardo"), approach another male adult (subsequently identified as
6 Singh) in front of the Shopping Center. Complaint, ¶ 15-16. Gallardo
7 handed Singh a dollar bill, which Singh appeared to examine and then
8 returned to Gallardo. Id. U.S. Currency serial numbers are often used
9 as a verification measure to deliver or receive narcotics or
10 narcotics proceeds, as they cannot easily be forged or altered, so if
11 the subject does not have the correct bill serial number, then
12 narcotics or narcotics proceeds will not be transferred to them.
13 Complaint, ¶ 17.

14 Following this exchange, officers observed Gallardo returning to
15 a nearby parking lot. Complaint, ¶ 18. Officers approached and
16 contacted Gallardo as he walked to a white Honda Accord with
17 California license plate number 8DZB844 (the "Vehicle"). Id. When
18 Gallardo noticed the FPD officers approaching him, he attempted to
19 quickly get into the Vehicle's driver-side door. Id. Officers
20 detained Gallardo and identified him based on a California Driver's
21 License in his possession. FPD officers identified another person
22 seated in the front passenger seat of the vehicle as Jesus Eduardo
23 Gallardo Montoya ("Montoya"). Id.

24 Gallardo gave verbal consent to a search of the Vehicle, and
25 during a search, officers discovered and seized \$200,000.00 in U.S.
26 Currency (i.e., the defendant currency). Complaint, ¶ 19. The
27 defendant currency was packaged in rubber bands inside of a plastic
28

1 bag and concealed in a brown cardboard box behind the driver's seat
2 of the Vehicle. Id. The defendant currency had no bank bands or bank
3 markings, and was rubber-banded in a manner consistent with DTO
4 narcotics proceeds. Complaint, ¶ 20.

5 Gallardo and Montoya each denied ownership of the defendant
6 currency, and each signed a Disclaimer of Ownership and Waiver of
7 Notice form. Complaint, ¶ 21. FPD officers then seized the Defendant
8 Currency, and while the officers were preparing paperwork, Gallardo
9 stated that he was at the location because he had been asked to do
10 someone a favor, but would not give any additional information about
11 the source of the defendant currency. Complaint, ¶ 22. After the
12 officers advised Gallardo of his Miranda rights, he made no further
13 statements. Id. Gallardo and Montoya were each arrested for
14 violations of California Health and Safety Code § 11370.6, but
15 released on scene pursuant to California Penal Code § 849(b).
16 Complaint, ¶ 23.

17 Upon returning to the FPD station, officers requested a K-9
18 officer to conduct a sniff of the defendant currency, and FPD Officer
19 B. Terwilliger responded with K-9 officer Axl. Complaint, ¶ 24-25.
20 Axl is certified in odor detection of narcotics including Marijuana,
21 Cocaine, Methamphetamine, Heroin, and Ecstasy; participates in bi-
22 weekly training; is certified in both patrol/narcotics detection
23 annually; and along with Officer Terwilliger, was originally
24 certified in 2019 after completing the "Narcotics Detection" course
25 at Scenturion K9/AEP training facility. Complaint, ¶ 25. Axl is
26 trained to passively alert upon the detection of the odor of
27 narcotics. Id. After conducting a sweep of the surrounding area,
28

1 Officer Terwilliger deployed Axl to the search area, and Axl alerted
2 to the bag containing the defendant currency. Complaint, ¶ 26.

3 The Government commenced a civil forfeiture action against the
4 defendant currency on October 12, 2022. (ECF No. 1.)

5 **III. ARGUMENT**

6 **A. Relevant Law**

7 In the Complaint, the Government contended that the defendant
8 currency was subject to forfeiture as proceeds of drug trafficking
9 pursuant to 21 U.S.C. § 881(a)(6), specifically, that the defendant
10 currency represents, or is traceable to, funds furnished or intended
11 to be furnished in exchange for a controlled substance or listed
12 chemical. See Complaint, ¶ 28-29.

13 In a civil judicial forfeiture action, "the burden of proof is
14 on the Government to establish, by a preponderance of the evidence,
15 that the property is subject to forfeiture." 18 U.S.C. § 983(c)(1).
16 "The Government may use evidence gathered after the filing of a
17 complaint for forfeiture to establish, by a preponderance of the
18 evidence, that property is subject to forfeiture." 18 U.S.C.
19 § 983(c)(2). A motion to dismiss based on Rule 12(b)(6) of the
20 Federal Rules of Civil Procedure tests the sufficiency of the
21 complaint on the ground that the plaintiff has failed to state a
22 claim upon which relief can be granted. See Fed.R.Civ.P. 12(b)(6).

23 Rule G of the Supplemental Rule for Certain Admiralty and
24 Maritime Claims sets forth the pleading standards for civil
25 forfeiture actions. See Supplemental Rule for Certain Admiralty and
26 Maritime Claims Rule G(2) (requiring that a complaint "state
27 sufficiently detailed facts to support a reasonable belief that the
28 government will be able to meet its burden of proof at trial").

1 In determining whether the Government's complaint is sufficient,
 2 the facts alleged in the complaint are assumed to be true, and in the
 3 context of a Rule 12(b) (6) motion, construed in the light most
 4 favorable to the non-movant. United States. Cahill v. Liberty Mut.
 5 Ins. Co., 80 F.3d 336, 338 (9th Cir. 1996); see also United States v.
 6 \$50,040 in United States Currency, No. C 06-04552 WHA, 2007 WL
 7 1176631 at *2 (N.D. Cal. April 20, 2007) ("[a]ll material allegations
 8 of the complaint are taken as true and construed in the light most
 9 favorable to the nonmoving party"). The complaint must contain enough
 10 facts, "accepted as true, to state a claim to relief that is
 11 plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662, 670 (2009).
 12 Finally, "when the legal sufficiency of a complaint's allegations is
 13 tested by a motion under Rule 12(b) (6), '[r]eview is limited to the
 14 complaint.'" Lee v. City of Los Angeles, 250 F.3d 668, 688 (9th Cir.
 15 2001).

16 The Government may discharge its ultimate burden of proof in a
 17 civil forfeiture action with circumstantial evidence, and is not
 18 required to trace specific assets directly to particular criminal
 19 violations. See United States v. Real Property Located at 22 Santa
 20 Barbara Drive, 264 F.3d 860, 872 (9th Cir. 2001) (circumstantial
 21 evidence may be used to show property subject to forfeiture); United
 22 States v. All Assets and Equipment of West Side Bldg. Corp., 58 F.3d
 23 1181, 1189 (7th Cir. 1995) ("direct connection between the property
 24 subject to seizure and the illegal activity that renders the items
 25 forfeitable need not be shown") (internal quotation marks and
 26 citation omitted).²

26 ² In addition, it is the law in this circuit that a complaint
 27 for forfeiture must also state probable cause at the time filed. See
 28 United States v. \$493,850 in U.S. Currency, 518 F.3d 1159, 1168-1169
 (footnote cont'd on next page)

1 In the drug trafficking context, courts have consistently
 2 recognized that the clandestine nature of the illegal drug trade
 3 makes direct evidence of drug sales (for example, records reflecting
 4 dates and parties to the drug transactions and the consideration paid
 5 for the drugs) typically unavailable. See United States v. Parcels of
 6 Land, 903 F.2d 36, 38 (1st Cir. 1990) (affirming forfeiture judgment
 7 for Government: "the government need not trace the [defendant]
 8 property to specific drug transactions"); United States v. 1982 Yukon
 9 Delta Houseboat, 774 F.2d 1432, 1435 n.4 (9th Cir. 1985) ("[t]here is
 10 no need to tie the [defendant asset] to proceeds of a particular
 11 identifiable illicit drug transaction") (citation omitted). The court
 12 uses an aggregate of the facts test, under which the fact-finder
 13 considers all facts indicative of the alleged illegal activity
 14 cumulatively, with no single factor being dispositive, in deciding
 15 whether there is a sufficient nexus between the assets sought to be
 16 forfeited and the illegal activity alleged to support the forfeiture.
 17 See United States v. U.S. Currency, \$42,500.00, 283 F.3d 977, 980-82
 18 (9th Cir. 2002).

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 22 (9th Cir. 2008). For this reason, courts in this Circuit often
 23 discuss motions to dismiss in terms of both probable cause and
 24 sufficiency under Rule 12(b)(6), and at times consider these burden
 25 in largely similar terms. See, e.g., United States v. \$50,000 In U.S.
 26 Currency, No. 22-CV-10085-RGK, 2021 WL 1593244, at *2 (C.D. Cal. Mar.
 27 1, 2021) ("The government has probable cause when it has reasonable
 28 grounds to believe that the property was related to an illegal drug
 transaction, supported by less than *prima facie* proof but more than
 mere suspicion. To meet this burden, the government need not tie an
 asset to a specific drug transaction, but may establish by
 circumstantial evidence that the seized asset is linked to drug
 trafficking in general" (internal citation omitted)).

1 ***B. The Court Should Deny the Motion Based on the Numerous***
 2 ***Allegations in the Complaint Connecting the Defendant***
 3 ***Currency to Narcotics Trafficking***

4 The facts alleged in the Government's complaint, considered in
 5 the aggregate, sufficiently allege the requisite nexus between the
 6 defendant currency and narcotics trafficking.

7 First, Trafficker 1 was known to law enforcement to be a
 8 narcotics trafficker.³ As detailed in the complaint, Trafficker 1 was
 9 intercepted on calls discussing narcotics transactions, and law
 10 enforcement seized substantial amounts of narcotics from Trafficker 1
 11 and his co-conspirators. Complaint, ¶ 9. Such record of drug activity
 12 "is a highly probative factor in the forfeiture calculus." United
 13 States v. \$67,220.00 in U.S. Currency, 957 F.2d 280, 286 (6th Cir.
 14 1992); see also United States v. \$83,310.78 in U.S. Currency, 851
 15 F.2d 1231, 1236 (9th Cir. 1988). Trafficker 1 is alleged to have
 16 spoken directly to Singh regarding pickups of U.S. Currency using
 17 coded language, and that same coded language was used by Singh and an
 18 unidentified person immediately prior to the intended handoff of the
 19 defendant currency. Complaint, ¶ 10-13.

20 Second, the use of coded language itself is indicative of a
 21 nexus with narcotics trafficking. As alleged, Singh knew the DTO's
 22 coded language and spoke with an identified member of the DTO

23 ³ Claimants argue that the government's failure to identify
 24 Trafficker 1 by name renders the Complaint insufficient. See Mot. at
 25 4-5. This argument is meritless. Claimants do not cite a single case
 26 in support of this argument, and certainly no authority holding that
 27 third-parties must be identified by name. In any event, the Complaint
 28 provides substantial information sufficient for Claimants to identify
 29 Trafficker 1 even before discovery begins, including describing the
 30 details of calls between Singh and Trafficker 1. See Complaint, ¶ 10-
 31 11. It is difficult to believe that Singh had multiple calls in that
 32 one month discussing the pickup of \$80,000 using the specific coded
 33 language identified.

1 regarding pickup of U.S. Currency using coded language, and then used
2 the same coded language on a later date to arrange the attempted
3 pickup of the defendant currency. Complaint, ¶ 10-13; see United
4 States v. \$165,822.00, No. 15-CV-1839-JLS, 2018 WL 6167939, at *5
5 (C.D. Cal. Mar. 14, 2018) (probable cause finding supported by
6 "intercepted phone calls in which Le used coded language to arrange
7 for the delivery of U.S. currency to DTO members").

8 Third, the circumstances of the interrupted handoff of the
9 defendant currency leads to an inference of drug trafficking. As
10 alleged in the complaint, before the defendant currency was to be
11 exchanged, Singh and Gallardo exchanged a U.S. currency bill and were
12 observed to be confirming the serial number on the bill. Complaint, ¶
13 15-17. As alleged, this is a common technique used by narcotics
14 traffickers to identify counterparties to a transaction. Id.

15 Fourth, the defendant currency was marked and banded in a manner
16 consistent with drug proceeds. See Complaint, ¶ 20 (defendant
17 currency "found in a bag, without any bank bands or markings, and was
18 rubber-banded in a manner consistent with DTO narcotics proceeds").
19 See United States v. Cruz, 669 F. App'x. 883, 883-884 (9th Cir. 2016)
20 (affirming summary judgment for government where, *inter alia*,
21 claimant possessed a large amount of cash in small and varied
22 denominations, rubber-banded together in separate bundles); United
23 States v. 22,800.00 In U.S. Currency, No. 2:17-CV-04611-SVW-AS, 2018
24 WL 3738962, at *3 (C.D. Cal. July 25, 2018) (denying motion to
25 dismiss based on amount of seized currency, inconsistent packaging,
26 lack of proper bank markings, and positive dog sniff alert).

27 Fifth, the courier's disclaimer of ownership of the defendant
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1 currency, nervous response, and lack of any innocent explanation
 2 similarly supports a nexus to the drug trade. See Currency, U.S.
 3 \$42,500.00, 283 F.3d 977, 982 (9th Cir. 2002) (probable cause where
 4 courier was "carrying a substantial sum of money, \$42,500 in cash,
 5 obtained from an unknown man, to be delivered to another man,
 6 identified only as Jose" and courier "denied knowing who owned the
 7 funds she carried across the country and disclaimed ownership both
 8 verbally and in writing."). Here, both Gallardo and Montoya
 9 disclaimed any interest in the defendant currency, and when
 10 questioned, Gallardo described the attempted handoff as doing a
 11 "favor" for an unidentified friend. Complaint, ¶ 21-22. Describing
 12 the delivery of \$200,000 in cash in a parking lot at night as a
 13 "favor" is exactly the sort of implausible explanation courts found
 14 not to be credible at the pleading stage. United States v. \$215,300
 15 U.S. Currency, 882 F.2d 417, 419 (9th Cir. 1989) (courier's
 16 concealing or lying about source of money supports inference of drug
 17 nexus). Similarly, when Gallardo saw the FPD officers approaching, he
 18 attempted to move quickly to the vehicle to avoid contact with them.
 19 See 40,200.00 in U.S. Currency, No. CV-14-6526-MWF (ASX), 2015 WL
 20 12914363 at *6 (C.D. Cal. Aug. 24, 2015) (claimant's "anxious
 21 behavior before the LAXNTF officers" supported probable cause).

22 Finally, as alleged in the complaint, a narcotics-detection
 23 canine alerted to the defendant currency. Claimants' cite a series of
 24 older cases attempting to cast doubt on the reliability of dog
 25 alerts, but ignore more recent Supreme Court precedent firmly

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1 establishing the validity of such evidence.⁴ For example, in United
2 States v. \$22,474 in U.S. Currency, the Ninth Circuit reviewed the
3 landscape of pre-CAFRA law on probable cause based on dog alerts, and
4 found probable cause where the government provided evidence that
5 "unless the currency [] was carrying had recently been in the
6 proximity of cocaine, the detection dog would not have alerted to
7 it." 246 F.3d 1212, 1216 (9th Cir. 2001). One year later, in United
8 States v. Currency, U.S. \$42,500.00, the Ninth Circuit held that "[A]
9 sophisticated dog alert, where the dog reacts only to ephemeral by-
10 products of narcotics and not to commonly circulated currency, is an
11 important factor in determining probable cause." 283 F.3d 977, 982
12 (9th Cir. 2002). While Claimants' may seek to dispute Axl's
13 sophistication, a "dispute over the nature of the canine alert is a
14 genuine issue of material fact that defeats summary judgment." United
15 States v. \$225,850.00 in U.S. Currency, No. CV 03-6582 GPS (CWX),
16 2004 WL 7333425, at *3 (C.D. Cal. Sept. 27, 2004).

17 Claimants also ignore the Supreme Court's 2013 decision in
18 Florida v. Harris, which affirmed long-standing precedent that
19 probable cause requires nothing more than facts sufficient to create

⁴ As authoritative treatises have recognized, the law has seen significant change on dog alerts since this pre-CAFRA case law. See Stefan Cassela, Asset Forfeiture Law in the United States, 2d ed., § 3-6 ("[I]n the mid to late 1990s, courts began to question the validity of the dog alert, suggesting that if - as was alleged to be the case - the vast majority of currency in circulation in the United States is tainted with cocaine residue, then an alert by a drug dog says nothing of any legal significance regarding the relationship of a sum of money to any drug offense that would support a forfeiture. The most recent cases, however, have accepted scientific evidence that a drug dog does not alert to cocaine itself or to any cocaine residue that may have adhered to seized currency. Rather, the dog alerts to a chemical by-product called methyl benzoate that evaporates if the currency is exposed to the air.").

1 "the kind of fair probability on which reasonable and prudent
2 people...act," and held that an alert by a trained canine is
3 sufficient to establish probable cause for a warrantless search, and
4 that "evidence of a dog's satisfactory performance in a certification
5 or training program can itself provide sufficient reason to trust his
6 alert." 568 U.S. 237, 246-247 (2013). As alleged in the Complaint,
7 Axl is such a certified detection canine. See Complaint, ¶ 25;
8 209,815 in United States Currency, No. 3:14-CV-00780, 2015 WL
9 5970186, at *9-10, N.7 (N.D. Cal. Oct. 14, 2015) (noting that "drug
10 dog alerted to the large sum of Defendant currency, again providing a
11 strong link to drug trafficking," and questioning relevance of pre-
12 Harris case law).

13 Claimants' response to the allegations in the Complaint is
14 largely to ask the Court to draw inferences in their favor and
15 against the government - which this Court cannot do at this stage.
16 For example, Claimants suggest that the circumstances of the
17 attempted delivery of the defendant currency were innocent (see Mot.
18 at 8 ("[I]t would be reasonable for individuals not to wish to
19 announce to anyone within earshot that they are holding \$200,000 in
20 cash in order to avoid robbery"), but while this is one (potentially)
21 plausible inference from these circumstances, facing competing
22 inferences, the Court cannot favor the movant at this stage. The
23 Court is obligated to accept - for present purposes only - the
24 competing inference; namely, that the use of coded language and
25 circumstances of this meeting are indicative of the illegal narcotics
26 trade. See, e.g., Complaint ¶ 17 ("U.S. Currency serial numbers are
27 often used as a verification process to deliver or receive narcotics

1 or narcotics proceeds, as they cannot easily be forged or altered.”).
2 As another example, Claimants argue that “no attempts were made to
3 hide” the defendant currency and consent was given to search the
4 vehicle (Mot. at 9), but ignore that the Vehicle’s occupants claimed
5 not to own the defendant currency, with one stating that he was
6 simply “do[ing] someone a favor” and refusing to say more. Complaint,
7 ¶ 21-22. Again, Claimants’ proposed innocent explanations are
8 premature, and the Court is obligated to credit the competing
9 inference – that a courier found with \$200,000 in unmarked bills in a
10 cardboard box claiming to be “doing a favor” for someone is
11 indicative of illegal activity, not legitimate business. As a final
12 example, Claimants suggest that there is nothing suspicious about
13 Singh and Gallardo’s exchanging of a bill to confirm serial numbers
14 (mot. at 8), but ignore the specific allegation that this is a method
15 of identification used in narcotics transactions. Complaint, ¶ 17. At
16 this stage, these proposed innocent explanations are premature.

17 ***C. Claimants’ Remaining Arguments Lack Merit***

18 Claimants identify a variety of purported “omissions” in the
19 Complaint. See Mot. at 4-6. Simply put, these are questions for
20 discovery, not the basis for dismissal on the pleadings. The
21 government’s burden is to “state sufficiently detailed facts to
22 support a reasonable belief that the government will be able to meet
23 its burden of proof at trial,” (Supp. Rule G(2)(f)), and in this
24 Circuit, to allege “reasonable grounds to believe that the property
25 was related to an illegal drug transaction, supported by less than
prima facie proof but more than mere suspicion.” United States v.
\$493,850.00 in U.S. Currency, 518 F.3d 1159, 1169 (9th Cir. 2008).

1 The Complaint sets forth Claimants' own actions (Complaint, ¶¶ 10-13,
 2 16), dates of the relevant intercepted call and seizure (id., ¶¶ 10-
 3 11, 13-15), the identities and identification documents of the
 4 couriers (id., ¶ 18), the location of the seizure and specific
 5 vehicle the defendant currency was seized from (id.), and the
 6 identity of the officers involved in the dog sniff and procedures
 7 applied. Id., ¶ 25-26.⁵ Indeed, Claimants' own motion goes on to
 8 identify at least seven sets of facts which the government alleges
 9 support forfeitability here. See Mot. at 6-11. A forfeiture complaint
 10 is not intended to be a substitute for full discovery, and Claimants'
 11 own motion shows that they have more than enough information to
 12 "commence an investigation of the facts" (Supp. Rule E.2), which they
 13 can supplement through discovery.

14 Claimants also assert that "the government provides no basis for
 15 Claimants to have been on notice that they were interacting with a
 16 supposed drug dealer." Mot. at 7. This is incorrect, as the Complaint
 17 alleges that Singh used coded language for U.S. Currency, which would
 18 put any average person on notice that they might be involved in
 19 questionable business. But more importantly, the Claimants' guilty
 20 knowledge is not part of the government's burden; it is an element of
 21 an affirmative defense of innocent ownership. See 18 U.S.C. § 983(d).
 22 The government has no obligation to negate the elements of an
 23

24 ⁵ While Claimants dispute that the government could have any
 25 valid reason for omitting information regarding the broader DTO
 26 investigation from the Complaint, they fail to identify how they have
 27 been prejudiced by having to wait for discovery as to this
 28 information, or cite to any precedent dismissing a forfeiture
United States v. Aguilar, (Mot. at 6), describes this standard as a
 "low bar" and held that "Supplemental Rule E(2)(a) does not
 articulate an onerous standard." 782 F.3d 1101, 1109 (9th Cir. 2015).

1 affirmative defense in the Complaint, because an affirmative defense
 2 is not an element of a plaintiff's claim, but rather, a defense to
 3 liability where the plaintiff has met all elements of her claim, the
 4 burden of which is borne by the defendant. See United States v.
 5 Gravenmeir, 121 F.3d 526, 528 (9th Cir. 1997). A complaint "need not
 6 anticipate, and attempt to plead around, potential affirmative
 7 defenses." Id., see also WB Music Corp. v. Futuretoday, Inc., No.
 8 2:18-CV-01238-CAS, 2018 WL 4156589, at *3 (C.D. Cal. Aug. 28, 2018)
 9 ("[A] complaint's failure to allege facts solely related to
 10 affirmative defenses is not a defect in the complaint because
 11 affirmative defenses must be pleaded in the answer, not the
 12 complaint." (quoting Davis v. Indiana State Police, 541 F.3d 760, 763
 13 (7th Cir. 2008)). The government's burden is to show that the
 14 defendant currency consisted of narcotics proceeds, and if the
 15 government prevails on that question, then the Claimants will bear
 16 the burden of proving that they were unaware that the defendant
 17 currency was tainted.⁶

18 ***D. The Court Should Permit the Government to Amend as an
 19 alternative to Dismissal***

20 Finally, while Claimants' Motion should be denied outright on
 21 the bases detailed above, to the extent that the Court determines
 22 that the allegations of the Complaint are insufficient, leave to
 23 amend should be liberally granted. See Conley v. Gibson, 355 U.S. 41,
 24 45-46 (1957) ("a complaint should not be dismissed for failure to

25 ⁶ Claimants also suggest that the Court should be skeptical
 26 because Gallardo and Montoya were released on scene as alleged (Mot.
 27 at 8-9), but the Complaint cites the specific provisions of
 28 California law at issue which provided for their immediate release in
 such circumstances. Complaint, ¶ 23. It is hardly suspicious that FPD
 officers followed California law.

1 state a claim unless it appears beyond doubt that the plaintiff can
2 prove no set of facts in support of his claim which would entitle him
3 to relief"); United States v. One Gulfstream G-V Jet Aircraft, 941 F.
4 Supp. 2d 1, 16 (D.D.C. 2013) (granting motion to dismiss forfeiture
5 complaint, but granting leave to amend, as "[t]he court has little
6 doubt that the government could cure these deficiencies by filing an
7 amended complaint that alleges additional facts").

8 **IV. CONCLUSION**

9 Based on the above, the Government respectfully requests that
10 this Court deny Claimants' motion to dismiss, as the verified
11 complaint states a claim upon which relief can be granted and also
12 states sufficiently detailed facts to support a reasonable belief
13 that the Government will be able to meet its burden of proof at
14 trial.

15
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Respectfully submitted,

17
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